

# Exhibit 12



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September 11, 2018

**BY EMAIL**

Lyn Hardy  
Special Counsel for Freedom of Information & Privacy Acts  
Office of Professional Responsibility  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W., Suite 3266  
Washington, D.C. 20530

Re: OPR FOIA No. F18-00140

Dear Ms. Hardy:

I am in receipt of your letter dated September 10, 2018, regarding OPR FOIA request No. F18-00140. As your letter states, our request was made on July 20, 2018. On that same day, we also submitted a FOIA and Privacy Act request to the U.S. Attorney's Office for the Western District of Virginia/EOUSA for information and documents, and the assigned number is EOUSA-2018-004905. When searching this reference number on FOIAonline.gov, the estimated date of completion for that request was September 10, 2018. Given that requests were made to those agencies/offices within DOJ on the same date in July, we thought that this information would have been provided to us by now. Or, that we would have received correspondence prior to the government's self-determined due date of September 10, 2018, especially since OPR FOIA did not produce any information by that date.

We are aware that records and information exist that are responsive to our requests. Indeed, OPR has produced some limited records to Ms. Neese under a confidentiality agreement. Thus, it is puzzling why OPR FOIA could not produce any documents by September 10.

Though OPR FOIA has designated our request as an "unusual circumstances" request, and have assigned it to the "complex track," to our knowledge many of the existing documents are not unusual or complex but simply involve communications from specific third parties about Ms. Neese and communications with and/ or from Ms. Neese.

Since your letter does not provide any date by which we may expect production, please advise the date by which we will receive the documents. It has been more than 40 days, at least 35 of which are counted by the statute, well more than the statute calls for, and we have not received any documents/information in response to our request. Although your letter points out that you need to consult with other Department components, it seems that ample time has passed in order for those Department components to have been consulted regarding this request, especially since

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we made a similar request to the U.S. Attorney's Office for the Western District of Virginia/EOUSA.

Moreover, according to 5 U.S.C. § 552(a)(6)(A)(i), OPR should have "determin[e] within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall *immediately* notify the person making such request of (i) such determination and the reasons therefore; (ii) the right of such person to seek assistance from the FOIA Public Liaison of the agency; . . ." However, in this matter, we were not consulted within 20 days, as set forth under the statute. Rather, only after we reached out to you on September 10, 2018, did we receive a response letter indicating that our request was an "unusual circumstances" request. Pursuant to the applicable code section, "the need for consultation . . . shall be conducted with all practicable speed[.]" Given that our request was made on July 20, 2018, and we did not receive any response from OPR FOIA until yesterday, we would ask that we be advised what OPR FOIA considers the time frame is for "the need for consultation . . . shall be conducted with all practicable speed" for purposes of responding to our request.

You have asked whether we would consider narrowing our request. The requested information is very important to my client at a number of different levels, and absent some specific offer from OPR FOIA, and the reasons therefore, on how to narrow the request, we must respectfully decline to do so. Ms. Neese is clearly entitled to this information, as no exceptions are applicable herein. Additionally, in light of the United States Court of Appeals for the District of Columbia's recent decision in *Bartko v. United States*, dated August 3, 2018, we anticipate receiving this material from OPR and other agencies of the Department of Justice pursuant to our requests made on July 20, 2018.

Please promptly let us know the date by which the information will be produced. If you wish to discuss this matter with me, I am happy to do so. Please feel free to call me.

Thank you for your time and attention to this matter.

Sincerely,

  
David G. Barger